

Oil and Gas Development Regulatory Overview

NPS Western Energy Summit
January 21–23, 2003

National Park Service
U.S. Department of the Interior
Natural Resource Program Center



Bureau of Land Management Lands

The BLM oil and gas regulations have three stages: planning, leasing and development. One of the biggest current issues in federal oil and gas leasing is whether or not an environmental impact statement (EIS) is necessary at the lease sale stage. Some courts in the western U.S. mandate an EIS at this stage. Others courts require an environmental assessment (EA) at the lease sale stage along with the issuance of leases with

environmentally protective stipulations. In these latter cases, a full EIS does not have to be performed until the Application for Permit to Drill (APD) stage where potential impacts are more imminent and identifiable. However, once the BLM has issued an oil and gas lease, the lease becomes a compensable property right interest that must be acquired if the government decides it does not want to allow development at the APD stage.

Statutes

Mineral Leasing Act of 1920 (MLA), 30 U.S.C. §§ 181 - 287: Authorizes the Secretary of the Interior to issue leases for leasable minerals on public domain lands. Amended by the Federal Onshore Oil and Gas Leasing Reform Act 1987 (FOOGLRA), Pub. L. No. 100-203, to require the BLM to lease lands that are known or believed to contain oil or gas deposits under a competitive oral bidding system.

Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. §§ 351 - 359: Allows mineral leasing on acquired lands that were not covered by the 1920 Mineral Leasing Act.

National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq.: Mandates that federal agencies assess the environmental effects of a proposed action and engage the public in the analyses of environmental impacts before agencies make decisions affecting the human environment.

Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1712: Directs the BLM

to manage lands in a multiple-use system. FLPMA requires the BLM to develop and maintain land use plans for resource management.

Energy Act of 2000, Pub. L. No. 106-469, 114 Stat. 2029: Requires the Secretary of the Interior to conduct an inventory of all onshore federal lands to identify all U.S. Geological Survey reserve estimates of oil and gas resources on these lands. The Secretary must also determine if any obstacles or restrictions to the development of the resources exist. Requires the oil and gas assessment to be updated regularly and presented to Congress.

Note: The 1920 and 1947 federal mineral leasing acts prohibit mineral leasing in park units. Because of explicit language contained in the enabling acts for the following three park units, the BLM can issue federal mineral leases in these units if it obtains the consent of the NPS: Lake Mead National Recreation Area, Whiskeytown National Recreation Area and Glen Canyon National Recreation Area.

Regulations

The Code of Federal Regulations (C.F.R.) provides for public participation in the planning, leasing and development stages of oil and gas. The planning stage invites the most public participation because after the BLM publishes its Notice of Intent to develop a resource management plan (RMP), an interested party can place its name on a mailing list and at various stages in the planning process, the party will be informed and can provide public comment. During the leasing stage before a piece of land may be put up for auction, the public is afforded an opportunity to comment. In the site-specific development stage, the BLM approves an

Application for Permit to Drill (APD) and must prepare an environmental assessment (EA) or an environmental impact statement (EIS), during which the public may provide comments.

(1) Planning

Public participation, 43 C.F.R. §§ 1601.0-6, 1610.2: Pursuant to NEPA, the public shall be given the opportunity to comment on the preparation of plans and be given early notice of planning activities. An EIS is required as part of the RMP preparation process.

Regulations

Resource management planning process, 43 C.F.R. §§ 1610.4-1 through 1610.4-9: Governs the resource management plan (RMP) process. RMPs are used by BLM managers to allocate resources and select appropriate uses for public lands.

RMP approval, use and modification, 43 C.F.R. § 1610.5: Discusses public comment and protest opportunities for the approval of new, revised and amended RMPs.

(2) Leasing

Stipulations on oil and gas leases, 43 C.F.R. §§ 3101.1-3 through 3101.1-4: Governs instances when the authorized officer has placed stipulations as conditions of lease issuance. Public review may be required to modify or waive these conditions.

Competitive leases; Nomination process; Posting of 45-day notice, 43 C.F.R. §§ 3120.3, 3120.4-2: Before accepting bid nominations, the BLM must review public comments received during a 30-day comment period that follows publication of notice in the Federal Register that nominations are going to be accepted. BLM then posts a "notice of competitive lease sale" for 45 days, providing a copy of the notice to the surface land managing agency with jurisdiction over any of

the included lands.

Competitive leases; Oral auction, 43 C.F.R. § 3120.5-1: Parcels are offered by oral bidding, where the winning bid is the highest bid by a qualified bidder, equal to or exceeding the national minimum acceptable bid.

Noncompetitive leases, 43 C.F.R. §§ 3110.1, 3120.6: Noncompetitive bidding only applies if no bid is received during competitive bidding. Parcels not sold at the competitive lease auction are made available for noncompetitive leasing for a two-year period beginning the day after the auction.

(3) Site Specific Development

Onshore oil and gas operations; Drilling applications and plans, 43 C.F.R. § 3162.3-1: Governs the procedures for site-specific oil and gas permitting. An operator is required to apply to the BLM for an Application for Permit to Drill (APD) which is subject to NEPA.

Environmental obligations, 43 C.F.R. § 3162.5-1: Ensures that the authorized officer prepares an environmental assessment (EA) or an environmental impact statement (EIS) before an APD is approved.

Relevant Case Law

Southern Utah Wilderness Alliance, 157 IBLA 150 (2002): The Interior Board of Land Appeals (IBLA) decided that the BLM's Finding of No Significant Impact (FONSI) was appropriate for a project that was to take place outside of Arches National Park using seismic equipment to acquire and evaluate data for potential exploratory oil and gas drilling. Southwestern Utah Wilderness Alliance (SUWA) and other plaintiffs were primarily concerned with the effect the seismic surveys would have on cryptobiotic soil crusts. IBLA concluded that because the seismic studies were taking place in an area currently open to oil and gas leasing, with several miles of existing, bulldozed travel-ways constructed for previous oil and gas exploratory seismic work, and because the area lacked wilderness value, the impacts on soils were not significant when "gauged against past, present and future activities in the area," especially since the Project Manager imposed several conditions

with the approval of the project that dealt with lessening the impacts on soil. In addressing the argument that seismic exploration violated the resource management plan (RMP), IBLA decided that because multiple uses were accounted for when adopting the RMP, the BLM did not need to consider alternate uses every time it issued leases. A challenge would only arise if the new use violated the RMP, and the plaintiffs did not establish that seismic exploration was such a violation.

Note: After this administrative hearing, a federal district court ruled in favor of the plaintiffs and has temporarily halted the seismic operation. The court agreed with the plaintiffs that the trucks used in seismic surveys would cause irreparable harm to the soil, plants and animals in the area. Plaintiffs are arguing that a full EIS is necessary before the project can continue.

Oil and Gas Regulatory Process Flowchart (BLM Lands)

